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Date of Deposit April 19, 2004

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Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By: \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appln. No. :  
Applicant : Dale B. Schenk  
Filed : Herewith  
TC/A.U. :  
Examiner :

Confirmation No.

STATEMENT UNDER  
MPEP § 2406.02

Docket No. : 15270J-004747US  
Customer No. : 20350

Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The undersigned, Anina D. Murphy, agent of record authorized to act on behalf of the Applicant and Assignee in matters relating to the subject Patent Application, does hereby declare and state that:

1. The cell line designated RB44-10D5.19.21 producing the antibody 10D5 described at e.g., paragraph no. 269 of the above-captioned application, was deposited at the American Type Culture Collection on April 8, 2003 and given accession number PTA-5129. The address of the American Type Culture Collection (ATCC) is 10801 University Boulevard,

**Exhibit D**

Manassas, VA 20110-2209. The deposit was made pursuant to the provisions of the Budapest Treaty. A copy of the ATCC receipt is attached as Exhibit 1.

2. The antibody 10D5, produced by the cell line identified in paragraph no. 1 is described in paragraph no. 270, Table 6, and paragraph no. 312 of the above-captioned application, and is also described at *e.g.*, p. 58, line 6 of U.S. Application No. 09/201,430, filed November 30, 1998; and, at p. 32, line 23 of U.S. Application No. 60/080,970, filed April 7, 1998. The above-captioned application is a continuation of U.S. Application No. 09/322,289, filed May 28, 1999, which is a continuation-in-part of U.S. Application No. 09/201,430, filed November 30, 1998 which claims the benefit under 35 U.S.C. 119(e) of U.S. Application No. 60/080,970, filed April 7, 1998, and U.S. Application 60/067,740, filed December 2, 1997, which are incorporated by reference in their entirety for all purposes.

3. The cell line designated RB96 3D6.32.2.4 producing the antibody 3D6 described in paragraph no. 354 of the above-captioned application was deposited at the American Type Culture Collection on April 8, 2003 and given accession number PTA-5130. The address of the American Type Culture Collection (ATCC) is 10801 University Boulevard, Manassas, VA 20110-2209. The deposit was made pursuant to the provisions of the Budapest Treaty. A copy of the ATCC receipt is attached as Exhibit 1.

4. The antibody 3D6, produced by the cell line identified in paragraph 3, is described in paragraph no. 354, and paragraph no. 355 of the above-captioned application, and is also described at *e.g.*, p. 77, lines 3-4 of U.S. Application No. 09/201,430, filed November 30, 1998; and, at p. 27, lines 10-11 of U.S. Application No. 60/080,970, filed April 7, 1998. The above-captioned application is a continuation of U.S. Application No. 09/322,289, filed May 28, 1999, which is a continuation-in-part of U.S. Application No. 09/201,430, filed November 30, 1998 which claims the benefit under 35 U.S.C. 119(e) of U.S. Application No. 60/080,970, filed April 7, 1998, and U.S. Application 60/067,740, filed December 2, 1997, which are incorporated by reference in their entirety for all purposes.

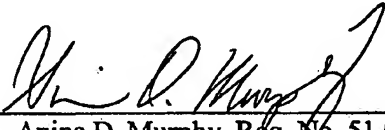
5. The cell lines identified in paragraphs 1 and 3 above will be maintained at the ATCC and replaced in the event of mutation, nonviability or destruction for a period of at least five (5) years after the most recent request for release of a sample was received by ATCC,

for a period of at least thirty (30) years after the date of the deposit, or during the enforceable life of the related patent, whichever period is longest.

6. All restrictions, on the availability to the public of the cell lines identified in paragraphs 1 and 3 above will be irrevocably removed upon the issuance of a patent from the above-captioned application.

7. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: April 19, 2004

  
Anina D. Murphy, Reg. No. 51,049

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60195237 v1

# ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-365-2745

## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### INTERNATIONAL FORM

#### RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.

To: (Name and Address of Depositor or Attorney)

Elan Pharmaceuticals, Inc.  
Attn: Nina Ashton  
800 Gateway Boulevard  
South San Francisco, CA 94080

Deposited on Behalf of: Elan Pharmaceuticals, Inc.

Identification Reference by Depositor:

Murine Hybridoma Cell Line: RB44-10D5.19.21  
Murine Hybridoma Cell Line: RB96 3D6.32.2.4

Patent Deposit Designation

PTA-5129  
PTA-5130

The deposits were accompanied by:    a scientific description    a proposed taxonomic description indicated above. The deposits were received April 8, 2003 by this International Depositary Authority and have been accepted.

AT YOUR REQUEST:   X   We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested May 5, 2003. On that date, the cultures were viable.

International Depositary Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Marie Harris  
Marie Harris, Patent Specialist, ATCC Patent Depositary

Date: June 2, 2003

cc: Joe Liebeschuetz

Ref: Docket or Case No.: 15270J-004720US

Exhibit 1